

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

## ORDER

Before the court is Defendants' Motion for Summary Judgment on Plaintiffs' Burk Tort Claim (doc. no. 44), filed on February 1, 2007. Plaintiff has responded to the motion (doc. no. 45), and the motion is at issue.

In considering this motion, the court applies the usual stringent standard applicable with respect to motions for summary judgment.

In support of their motion, defendants argue that the availability of an adequate statutory remedy under the Railway Labor Act precludes the recognition of a Burk tort claim under Oklahoma law in this case. Defendants also argue that a Burk tort theory is not available in this case because plaintiffs' claims do not implicate Oklahoma public policy.

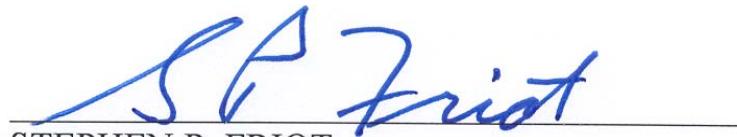
As relevant to the court’s disposition of this motion, plaintiffs’ response to the motion is well-focused and clearly articulated. Plaintiffs “concede” that their Burk claims are foreclosed if punitive damages are available under the RLA but assert that if the court concludes that punitive damages are not available under the RLA, then plaintiffs do have a viable Burk claim in this case. The unavailability of punitive

damages is the *only* remedial insufficiency asserted by plaintiffs in support of their contention that the inadequacy of the remedy under the RLA mandates the recognition of a Burk claim in this case.

Taking into account the full range of remedies available under the RLA (as conceded in defendants' motion - concessions which will be binding on these defendants for the remainder of this litigation), the court concludes quite easily that the unavailability of punitive damages under the federal law which is invoked in this case does not lead to the creation of a Burk tort remedy. *See, e.g., Hale v. MCI, Inc.*, 2006 WL 223829 (W.D. Okla. 2006); and *Kisselburg v. AAR Allen Group, Inc.*, 2005 WL 2897431 (W.D. Okla. 2005).

Accordingly, Defendants' Motion for Summary Judgment on Plaintiffs' Burk Tort Claim is **GRANTED**.

DATED February 27, 2007.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE